

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

E.I. DUPONT DE NEMOURS AND COMPANY  
d/b/a DUPONT EDGE MOOR PLANT<sup>1</sup>

Employer

and

DUPONT EDGE MOOR EMPLOYEES UNION

Petitioner

Case 4–RC–20900

and

PAPER ALLIED - INDUSTRIAL, CHEMICAL AND  
ENERGY WORKERS INTERNATIONAL UNION  
(P.A.C.E.) and its LOCAL 2-786

Intervenor

E.I. DUPONT DE NEMOURS AND COMPANY  
d/b/a DUPONT EDGE MOOR PLANT

Employer

and

PERRY DOUGLAS

Petitioner

Case 4–RD–2025

and

PAPER ALLIED - INDUSTRIAL, CHEMICAL AND  
ENERGY WORKERS INTERNATIONAL UNION  
(P.A.C.E.) and its LOCAL 2-786

Union Involved<sup>2</sup>

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<sup>1</sup> The Employer's name appears as amended at the hearing.

## **REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION**

The Employer, DuPont Edge Moor Plant, manufactures various chemical products at its facility in Wilmington, Delaware (herein called the Plant). The Petitioner in Case 4–RC–20900, DuPont Edge Moor Employees Union (DEMEU), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a bargaining unit of about 133 employees employed at the Plant, which currently is represented by the Intervenor, P.A.C.E. and its Local 2-786.<sup>3</sup> The Petitioner in Case 4–RD–2025, Perry Douglas, filed a petition with the Board under Section 9(c) of the Act seeking to decertify the Intervenor as the exclusive collective-bargaining representative of the same unit. On September 24, 2004, the undersigned Regional Director issued an Order Consolidating Cases, which consolidated these two proceedings.

The parties stipulated to the scope and composition of the unit. The sole issue in Case 4–RC–20900 is whether DEMEU is a “labor organization” within the meaning of Section 2(5) of the Act. Contrary to DEMEU and the Employer, the Intervenor contends that DEMEU is not a labor organization. There are no issues in Case 4–RD–2025.<sup>4</sup>

A hearing officer of the Board held a hearing, and the Employer and DEMEU filed briefs.<sup>5</sup> I have considered the evidence and the arguments presented by the parties concerning the issue of whether DEMEU is a labor organization within the meaning of Section 2(5) of the Act, and as discussed below I have concluded that DEMEU meets this statutory definition. In this Decision, I first will review the factors that must be evaluated in determining labor organization status. Then, I will present the facts and reasoning that support my conclusion.

### **I. FACTORS RELEVANT TO DETERMINING LABOR ORGANIZATION STATUS**

Section 2(5) of the Act defines a “labor organization” as “any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.”

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<sup>2</sup> Although in Case 4-RD-2025, the Intervenor would ordinarily be identified as the “Union Involved,” for simplicity this Decision will refer to P.A.C.E. and its Local 2-786 consistently as the Intervenor. The Intervenor’s name appears as amended at the hearing.

<sup>3</sup> The Employer and the Intervenor were parties to a collective-bargaining agreement effective by its terms from June 1, 2000 through May 31, 2003, which was extended to May 31, 2004. They currently are negotiating a successor agreement. The parties stipulated that there is no contract bar to this proceeding.

<sup>4</sup> If DEMEU is found not to be a labor organization within the meaning of the Act, Douglas wishes to proceed with Case 4-RD-2025.

<sup>5</sup> The Intervenor did not present any witnesses at the hearing. The Intervenor also did not present an oral argument or submit a brief.

See *Polaroid Corp.*, 329 NLRB 424 (1999); *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962). The Board liberally construes this definition. *St. Anthony's Hospital*, 292 NLRB 1304, 1305 (1989), enfd. 902 F. 2d 1572 (8th Cir. 1990).

Under this definition of a labor organization, an incipient union that is not yet representing employees still may be accorded Section 2(5) status if it admits employees to membership and was formed for the purpose of representing them. *Coinmach Laundry Corp.*, 337 NLRB 1286 (2002). Labor organization status is not based on instances of a group's dealing with an employer. Rather, regardless of the progress of the organization's development, it is the intent of the organization that is critical in ascertaining labor organization status. *Armco, Inc.*, 271 NLRB 350 (1984); *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980).

Moreover, "structural formalities are not prerequisites to labor organization status within the broad meaning given that phrase in Section 2(5)." *Coinmach Laundry Corp.*, supra; *Yale New Haven Hospital*, 309 NLRB 363 (1992); *Betances Health Unit, Inc.*, 283 NLRB 369, 375 (1987). Labor organization status has been found even when the organizations have lacked a combination of several of the following: constitution, bylaws, officers, minutes of meetings, reports filed with government agencies, dues or initiation fees, formal membership, and formal structure. *Yale New Haven Hospital*, supra at 364; *Betances Health Unit*, supra; *Comet Rice Mills*, 195 NLRB 671, 674 (1972); *East Dayton Tool & Die Co.*, 194 NLRB 266 (1971); *Butler Mfg. Co.*, 167 NLRB 308 (1967). It is well settled that the existence of elected officers and a constitution or bylaws is not determinative in analyzing whether an organization or association is a labor organization within the meaning of the Act. *New Silver Palace Restaurant*, 334 NLRB 290, 295 (2001); *Armco Inc.*, supra. Further, while such structural formalities may become relevant when and if an organization becomes the collective-bargaining agent of a unit of employees, they are not essential to its existence at the early stages of its organization. *Comet Rice Mills*, supra.

## **II. FACTS**

DEMEU has been in existence since the third week of September 2004. It is not affiliated with any other labor organization, and it plans only to represent employees in the Plant. Its founders testified that they formed DEMEU because they believed that they could improve the quality of the employees' representation, and they wanted to represent themselves.

DEMEU has had about six meetings at various places in the Claymont, Delaware area. Petitioner Douglas organized the first meeting on September 21, 2004 at a restaurant. The meeting lasted about one hour and was attended by four or five employees of the Employer, who became DEMEU's interim officers.<sup>6</sup> The interim officers are Douglas – President; Scott Bollen – Vice President; Michael Lake – Treasurer; Franklin J. Nelson – Secretary; and Bill Harris – Contract Chairman. At these meetings, the interim officers discussed their concerns about their representation and the possibility of forming a new labor organization and becoming certified to represent employees concerning wages, grievances, seniority, job bidding, bumping rights, and

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<sup>6</sup> DEMEU plans to conduct its first election of officers following certification, if it wins the election.

flexibility in job assignments. They also discussed membership dues and decided to allow the members to decide the dues amounts following DEMEU's anticipated certification. Only the interim officers have attended DEMEU's meetings, and at least two of them were present for each meeting. The participants did not take notes at any of the meetings. The interim officers have circulated a petition to other employees seeking their support for DEMEU. They also held discussions with unit employees about various issues at the Plant.

DEMEU does not have a constitution, bylaws, rules, or regulations, but the interim officers plan to write a constitution. DEMEU has not collected any dues, fees, or assessments and does not have membership applications or cards. DEMEU has not met with or had any conversations with the Employer.

### **III. ANALYSIS**

Based on the above facts, DEMEU meets the statutory definition of "labor organization." DEMEU's purpose is to serve as a representative of employees at the Plant in order to deal with the Employer concerning the matters itemized in Section 2(5). *Coinmach Laundry Corp.*, supra at 1287. In addition, DEMEU admits employees to membership, thus establishing that it is an organization in which employees participate. DEMEU's interim officers, all of whom are employees of the Employer, have participated by attending its meetings and circulating a petition to other employees. As an incipient organization, DEMEU currently does not have structural formalities, such as elected officers, a constitution, bylaws, minutes of meetings, formal membership, or dues or initiation fees. However, the Board has consistently held that the lack of structural formality does not preclude a finding of labor organization status. *Coinmach Laundry Corp.*, supra at 1286 and cited cases therein.

Based on the foregoing, I find that DEMEU is an organization that admits employees into membership and permits employees to participate in its affairs and that it exists for the purpose, at least in part, of dealing with employers concerning employees' terms and conditions of employment. Accordingly, the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. *Coinmach Laundry Corp.*, supra; *Betances Health Unit, Inc.* supra; *Alto Plastics*, supra.

### **IV. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. DEMEU and the Intervenor are labor organizations that claim to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The parties stipulated, and I find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Employer at its Edge Moor Plant located in Wilmington, Delaware, excluding Administrative Secretary to the Plant Manager, Human Resources Assistant, Technologists (Training, Planning, and DCS), Work Leader, Nurses, salary roll employees exempt under the Fair Labor Standards Act, guards, and supervisors as defined in the Act.

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by **Paper Allied – Industrial, Chemical and Energy Workers International Union (P.A.C.E.) and its Local 2-786** or **DuPont Edge Moor Employees Union**, or by **Neither**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **November 10, 2004**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (215) 597-7658, or by E-mail to [Region4@NLRB.gov](mailto:Region4@NLRB.gov).<sup>7</sup> Since the list will be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

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<sup>7</sup> See OM 04-43, dated March 30, 2004, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 04-43 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).

## **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for review may also be submitted by E-mail. For details on how to file a request for review by E-mail, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m., EST on **November 17, 2004**.

Signed: November 3, 2004

at Philadelphia, Pennsylvania    /s/ [Dorothy L. Moore-Duncan]  
DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four